

**To:** Karen Schwinn/R9/USEPA/US@EPA[]  
**Cc:** Erin Foresman/R9/USEPA/US@EPA; Tom Hagler/R9/USEPA/US@EPA[]; om Hagler/R9/USEPA/US@EPA[]  
**From:** Carl Wilcox  
**Sent:** Thur 2/16/2012 8:06:02 PM  
**Subject:** Re: BDCP Governance - EPA Comments on Revised Chapter 7

Thanks for both Karen

>>> Karen Schwinn <Schwinn.Karen@epamail.epa.gov> 2/16/2012 10:30 AM >>>

Carl -

There was an attachment to our comments that I didn't include on my previous email. Sorry for the inconvenience. - Karen

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----- Original Message -----

From: Tom Hagler  
Sent: 02/13/2012 03:10 PM PST  
To: "Barajas, Federico" <FBarajas@usbr.gov>  
Cc: Karen Schwinn; Erin Foresman; Tim Vendlinski; Valentina Cabrera-Stagno; Bruce Herbold; Carolyn Yale; "Nawi, David" <David\_Nawi@ios.doi.gov>  
Subject: BDCP Governance - Brief Comments on Revised Chapter 7  
Federico -

Two very brief comments on the revised Governance Chapter 7 (distributed for comment on February 8, 2012, but dated September 13, 2011).

(1) At section 7.4.2 (page 7-34) of the redlined version, there is a discussion of "Obtaining Additional Regulatory Authorizations." It included a statement that "[t]he IO [Implementation Office] will generally assume responsibility for identifying and seeking such [other] regulatory authorizations, unless the applicable Authorized Entity chooses to do so."

This statement is incorrect. The legal entity doing the regulated activity is the responsible entity for securing and complying with the terms of any regulatory permit needed. Nothing in the BDCP can change that direct legal responsibility of the entity doing the regulated

activity.

What I think is envisioned is that the IO may help as necessary and can even act as a kind of consultant preparing drafts of permit applications or whatever the IO works out with the action agency. But the legal responsibility for the application and its contents and the commitments made in the permit remains with the action agency.

I think the better way to say this is the way it is described back in Section 7.1.7 (Other Regulatory Agencies), where it describes the IO as a facilitator.

(2) The following comment is more of a precautionary observation. Back at Section 7.1.1, the nature of the IO and the Program Manager are described, sometimes inconsistently, but with enough to get the idea. The idea, though, looks a lot like the old CALFED Bay Delta Program process, where a program manager (Lester Snow, who was usually on IPA's to the USBR) was co-located with a lot of different state and federal agency staff. That is, the CALFED Bay Delta Program did not have a legal existence, either as a federal entity or as a state entity. Each staff member had to comply with their home agency personnel and accounting rules, and contracting had to be "run through" either some federal or some state agency.

This was a nightmare for the senior administrative staff. You might want to check with Lester Snow, Wendy Halvorsen Martin, or Mary Schoonover as to exactly how much of an administrative nightmare it was. I am attaching an excerpt from an Assurance Workgroup (later called the Governance Workgroup) briefing package that briefly describes some of the issues associated with this set-up. The fact that the CALFED Bay Delta Program did not have a separate legal existence was frequently cited as a justification for some of the governance legislation that came out in the early 2000's. I'm not saying that the particular governance legislation was necessarily a good idea (the California Bay Delta Authority was widely vilified, and the Delta Stewardship Council has its own issues). But if you decide to go with this CALFED model, you should be aware that you will have a lot of administrative expense sorting out state and federal personnel, budgeting and acquisition issues.

Here's an excerpt from the CALFED Bay Delta Program Staff Report, Assurance Work Group, January 12, 1999. The entire "Current Problems" list is kind of entertaining for those grappling with entity issues, but the most relevant are the short discussions of Program Implementation and Budgeting etc.

(See attached file: CALFED Current Problems.PDF)

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